ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

To: The Commission

**REPLY OF AIRTOUCH COMMUNICATIONS, INC.
TO COMMENTS AND OPPOSITIONS**

AirTouch Communications, Inc. ("AirTouch"), pursuant to Section 1.429 of the Commission's Rules,[1] hereby submits its reply to the comments on and oppositions to various petitions for reconsideration and/or clarification filed with respect to the Second Report and Order and Memorandum Opinion and Order[2] ("Second Report") in the captioned proceeding. The following is respectfully shown:

I. The Commission Should Prohibit Wireless-Only Take-Backs

1. In their Petitions for Reconsideration, AirTouch, AT&T and PageNet all requested that the Commission expressly prohibit mandatory wireless number take-backs because they are not technology-blind and require wireless carriers and customers to bear a disproportionate portion of the costs and burdens associated with numbering relief.[3]

---

[1] 47 C.F.R. § 1.429.

[2] FCC 96-333, released August 8, 1996.

[3] Petition for Partial Reconsideration and/or Clarification of Second Report and Order and Memorandum Opinion and Order of AirTouch Paging and PowerPage filed October 7, 1996, pp. 16-20; Petition for Limited Reconsideration of Paging Network, Inc. filed on October 7, 1996, p. 6 [PageNet also supported AirTouch's petition on this point in its comments at pp. 1-2]; and Petition for Limited Reconsideration and Clarification of AT&T Corp. filed October 7, 1996, p. 12-14. Such a technology blind approach was required by the Ameritech Order. Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995).

US WEST strongly supported these requests,[4] and no commenter opposed these requests.

2. The record provides ample evidence that wireless take-backs impose an extraordinary burden on wireless carriers and customers and that they are inconsistent with the policies established by the Commission to ensure that numbering relief does not discriminate against a particular class of carrier. None of the commenters has disputed these conclusions. Accordingly, AirTouch urges the Commission to explicitly prohibit wireless take-backs.

II. The Commission Should Not Modify the Safeguards Associated with Area Code Overlays

3. Commercial mobile radio service ("CMRS") providers and new entrants, such as competitive local exchange carriers ("CLECs"),[5] generally oppose the petitions seeking to eliminate the Commission's two prerequisite conditions to area code overlays and LECs generally support elimination of these two conditions. The LECs, however, have failed to overcome the CMRS providers' and new entrants' demonstration that these two conditions are necessary to alleviate the potential anti-competitive effects of area code overlays.[6]

4. These two conditions are the touchstone of local competition. Absent mandatory 10-digit dialing, customers of new entrants and CMRS providers will be required to dial

---

[4] US WEST Response to Reconsideration Petitions Concerning the Second Report and Order filed October 7, 1996, pp. 13-15.

[5] Opposition of Cox Communications, Inc. to Petitions for Reconsideration filed November 20, 1996, pp. 3-4; Consolidated Comments and Opposition to Selected Petitions for Reconsideration of Teleport Communications Group, Inc. filed November 20, 1996, pp. 8-9; Opposition and Comments of MCI Telecommunications Corporation to Petitions for Reconsideration and Clarification filed November 20, 1996, pp. 2-3; Comments on Petitions for Reconsideration of Sprint Corporation filed November 20, 1996, p. 8; and MFS Communications Company, Inc. Response to Petitions for Reconsideration of Second Report and Order filed November 20, 1996, p. 7.

[6] Several parties, including AirTouch, believe that all-service area code overlays generally are the most effective, least discriminatory and least burdensome mechanism for numbering relief. See PageNet Comments, p. 5;Opposition to Petitions for Reconsideration of Bell Atlantic NYNEX Mobile filed November 20, 1996, p. 6.

10 digits (3 more than the incumbent's customers) to make the majority of their calls, whereas customers of incumbent LECs ("ILECs") will be able to dial 7 digits to make the same calls.[7/] In addition, since wireless carriers typically have a higher fill factor per code (over 90%) than do ILECs (approximately 50%), wireless carriers will need new NXXs sooner than will ILECs so they will bear a disproportionate burden of 10-digit dialing.[8/] ILECs also will be able to use its number resources to impede competition because they will continue to assign numbers to more customers from the old NPA due to the large supply of numbers they have been able to stockpile as the result of temporary shelving of returned telephone numbers.[9/] By requiring 10-digit dialing for all calls in the area to be served by the overlay area code, customers receiving telephone numbers in the new area code will not be subject to a unique burden based upon the identity of their service provider.[10/]

5. The LECs also seek to eliminate the requirement that all authorized carriers be assigned at least one NXX from the familiar NPA code. This proposal would only exacerbate the dialing disparity problem. The Commission's NXX assignment rule partially assists CMRS providers and new entrants in enabling them to assign more new customers telephone numbers from the familiar area code.[11/] The Commission

---

[7/] Teleport Comments, pp. 9-10; MCI Comments, p. 3; MFS Comments, p. 7. This is so because CMRS providers and new entrants are likely to receive a disproportionate share of telephone numbers from the new area code. Id.

[8/] PageNet Comments, p. 4.

[9/] Teleport Comments, p. 10; MFS Comments, pp. 7-8.

[10/] AirTouch opposes any scheme which is service-specific or results in the ability of the incumbent to extend its monopoly power into competitive markets.

[11/] In recognition of the benefits of this requirement, several wireless providers and new entrants have demonstrated that the prerequisite should be modified slightly to accomplish its intended purpose. Specifically, authorized carriers in the area to be served by an area code overlay should be entitled to a sufficient number of NXXs to enable them to assign numbers in the familiar area code throughout their service area. These carriers should not be stymied by the ILEC traditional rate centers. AirTouch Comments, pp. 8-9; Petition for Limited Reconsideration and Clarification of AT&T Corp. filed October 7, 1995, p. 7; Petition for Reconsideration of Teleport Communications Group, Inc. filed October 7, 1996, p. 7.

should, therefore, reject the LECs attempts to vitiate the Commission's protection of competition.

6. Certain LECs and state commissions assert that 10-digit dialing will cause customer confusion, dissatisfaction and increase costs to carriers.[12/] AirTouch disagrees. Confusion is most likely when there is 7-digit dialing for some local numbers, and 10-digit dialing for other numbers within the same geographic area. Elimination of 10-digit dialing will also impede competition. Potential customers will be reluctant to subscribe to the services of a CMRS provider or new entrant if they are required to dial more digits for most of their calls than customers of ILECs are required to dial.

7. The LECs and state commissions also assert that the NXX assignment requirement is not workable and will delay implementation of numbering relief.[13/] AirTouch disagrees. As AirTouch explained in its comments, state commissions are aware of the identity of telecommunications carriers authorized to provide service within their boundaries by virtue of licensing or registration requirements.[14/] Since state commission will know the identity of new entrants and when numbering resources will be exhausted, state commissions should be able to reserve an appropriate number of

---

[12/] Response of the Pennsylvania Public Utility Commission in Support of the Petition for Reconsideration of The New York State Department of Public Service filed November 20, 1996, p. 5; Bell Atlantic's Response to Petitions for Reconsideration filed November 20, 1996, p. 3.

[13/] The Public Utilities Commission of Ohio's Opposition and Comment to Petitions for Reconsideration of the Second Report and Order filed November 20, 1996, pp. 4-5; Bell Atlantic Comments, p. 3; Comments on Petitions for Reconsideration of Pacific Telesis Group ("PacTel"), p. 4; Consolidated Opposition and Comments of BellSouth Corporation, pp. 2-3; Consolidated Response of the United States Telephone Association ("USTA"), pp. 5-6; Ameritech Comments on Petitions for Reconsideration filed November 20, 1996, p. 6; Opposition To and Comments On Petitions for Reconsideration and/or Clarification of GTE Service Corporation filed November 20, 1996, p. 12; and US WEST Comments, p. 13.

[14/] Comments of AirTouch Communications, Inc. on Petitions for Reconsideration filed November 20, 1996, pp. 8-12.

NXXs for assignment in the 90 days preceding an area code overlay without having to unnecessarily warehouse NXX codes.

8. AT&T and others requested that the Commission reconsider its refusal to require long term number portability as a prerequisite to area code overlays.[15/] These requests were supported by Cox, Teleport, MCI and Sprint.[16/] AirTouch disagrees with these requests. The benefits of promptly providing numbering relief in the form of all-service overlays outweigh the potential risks to the wireline industry associated with implementing overlays prior to the introduction of long term number portability. Numbering resources in several areas are dangerously close to exhaustion. As demonstrated by PageNet in its petition, NXX exhaustion is inevitably more harmful to wireless carriers than to wireline carriers.[17/] Numbers should not be permitted to run out in any area in the future, regardless of whether long term number portability is in place or not. If the Commission were to insist upon long term number portability prior to permitting overlays, much needed numbering relief would be delayed.

9. Notably, the Commission has adopted two prerequisites to overlays which should reduce ILECs' ability to use area code overlays to their advantage. Those prerequisites, coupled with the requirement that interim number portability measures be employed to ensure that subscribers switching carriers can retain their telephone numbers, should work to reduce subscriber hesitancy to sign up with a CMRS provider or new entrant in areas covered by an area code overlay, and should allocate the burdens associated with numbering relief to subscribers of all carriers, not just new entrants and wireless

---

[15/] Petition for Limited Reconsideration and Clarification of AT&T Corp. filed October 7, 1996; Petition for Reconsideration of Cox Communications, Inc. filed October 7, 1996; and MFS Communications Company, Inc. Petition for Partial Reconsideration of Second Report and Order filed October 7, 1996.

[16/] Cox Comments, pp. 2-4; Teleport Comments, pp. 3-5; MCI Comments, p. 8; and Sprint Comments, pp. 7-8.

[17/] PageNet Petition, pp. 2-4.

carriers. In light of the foregoing, the Commission should decline to impose an additional prerequisite to area code overlays.

III. The Commission Should Clarify the Numbering Administration Costs LECs May Recover

10. AT&T has requested that the Commission limit the costs LECs can recover in connection with their duties as numbering administrators. Specifically, AT&T requested that LECs only be entitled to recover for numbering administration those costs which would have been incurred by a neutral third party numbering administrator.[18/] AirTouch, PageNet, PCIA, and Teleport all support AT&T's request.[19/] GTE and PacTel oppose the request,[20/] but fail to adequately demonstrate why AT&T's request does not advance the Commission's public policy objectives.[21/] Perhaps these companies have read too much into AT&T request.[22/] AT&T simply requested clarification that charges for central office code assignments be just, reasonable and not

---

[18/] Petition for Limited Reconsideration and Clarification of AT&T Corp. filed October 7, 1996, pp. 10-12.

[19/] AirTouch Comments, pp. 12-14; PageNet Comments, p. 9; and Teleport Comments, pp. 10-11 (clarifies that AT&T's request relates to central office code assignment fees). Other commenters, such as MFS Communications Company, Inc., MCI, National Cable Television Association, Inc. and the Telecommunications Reseller Association all support the current Commission costing mechanism.

[20/] PacTel Comments, pp. 4-5; GTE Comments, pp. 15-16.

[21/] GTE proposes the Commission adopt retail revenues as the appropriate measure for determining the code administrator's costs. See Comments of GTE at pp. 14-16. AirTouch opposes this proposal because it would have a disparate impact on those telecommunications services that have a smaller profit margin. GTE argues that since it does not charge for the hardware and software associated with opening a new NXX, a charge for the facilities used to route traffic to and from the new NXX to serve its customers is appropriate. GTE Comments, p. 13. To the contrary, the purpose of the 1996 Act is to ensure that services are provided by LECs at cost-based rates. It appears that GTE proposes to charge carriers for a function which is purely internal and related to its own service to its subscribers. Such costs are more appropriately borne by GTE itself. PacTel states that ILECs are entitled to recover the costs associated with numbering administration. PacTel Comments, p. 4. AT&T's request is not inconsistent with this principle.

[22/] AirTouch also opposes BellSouth's suggestion that charges for number administration be based upon access lines. See Comments of BellSouth at pp. 4-6. This type of charge would discriminate against CMRS carriers, such as paging, that have low revenues per line.

discriminatory. Other charges assessed with respect to central office codes, which are interconnection-related, are governed by the principles adopted in the First Report and Order[23/] (the "First Report") adopted in this proceeding, i.e., based upon forward-looking long-run incremental costs. This is precisely what the Commission implied in the Second Report. AT&T's request is consistent with the requirements of the statute and in line with the Commission's public policy objectives, and the Commission should adopt it summarily.[24/]

IV. The Commission Should Not Impose Network Disclosure Obligations On All Telecommunications Carriers

11. Several of the LECs have urged the Commission to expand the application of the network disclosure obligation to include all telecommunications carriers while other carriers, such as AirTouch and Cox, opposed such expansion.[25/] As was demonstrated by AirTouch and Cox, the LECs' requests are inconsistent with the statute and with public policy and therefore must be rejected by the Commission.[26/] The purpose of the network disclosure obligation is to prevent LECs from using their market power and bottleneck facilities to erect barriers to entry against would-be competitors or impede competition. Consequently, the 1996 Act reflects different levels of obligations for

---

[23/] FCC 96-325, released August 8, 1996.

[24/] Arch Communications Group, Inc. has requested confirmation that charges to recover "ongoing costs" associated with maintaining numbering information are inappropriate with respect to Type 2 numbers, and must be cost-based with respect to Type 1 numbers. AirTouch agrees, with one caveat. The Commission also should confirm that an ILEC may not charge any code related fees unless it charges all telecommunications carriers the same charge, including itself and its affiliates and subsidiaries.

[25/] Bell Atlantic Comments, pp. 9-10; Ameritech Comments, pp. 11-12; and GTE Comments, pp. 18-20. See AirTouch Comments, pp. 15-18; Cox Comments, pp. 4-6.

[26/] Cox Comments, pp. 4-5; AirTouch Comments, pp. 15-16.

different carriers and imposes the network disclosure obligation only upon ILECs.[27] The Commission should not alter the rule as requested by the ILECS.[28]

V. Dialing Parity Must Be Provided to Providers of Telephone Exchange Service, Exchange Access or Both

12. Ameritech requested that the Commission limit the right to receive dialing parity to carriers who provide both telephone exchange service and exchange access.[29] AirTouch, Sprint, and the Public Utilities Commission of Ohio opposed this request in their comments as being inconsistent with the statute.[30] According to the statute, dialing parity must be provided to providers of telephone exchange service, exchange access, or both. Any other reading would contravene the statutory intent and the public interest. Indeed Section 251(b)(3) does not limit the types of services or traffic for which dialing parity must be provided. Further, limiting the class of carriers who are entitled to dialing parity, as Ameritech requests, would eviscerate the purpose of the 1996 Act -- to increase competition in the local marketplace. Taken to its logical conclusion, Ameritech's request would exclude providers of telephone exchange service who do not also provide exchange access from receiving dialing parity. But, these are precisely the carriers to whose benefit the dialing parity should run in order to promote

---

[27] The LECs' reliance upon Section 256 of the 1996 Act for the proposition that the Commission should use this proceeding to broaden the scope of the network disclosure obligation is inapposite. The Commission explicitly stated in the Second Report that it would adopt rules implementing the obligations contained in Section 256 in a separate proceeding. In light of that statement, it would not be appropriate for the Commission to prejudice the outcome of that proceeding by acting here.

[28] The motives of the ILECs are not entirely clear. It appears that the ILECs may want the requirement imposed on their competitors to ensure that they have notice of network changes, and an adequate time to prepare a competitive response. As the Commission has observed in other proceedings, such a notice requirement on a competitive industry impedes competition. See Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, FCC 93-252 (March 7, 1994) ¶¶ 175, 177.

[29] Petition for Clarification or Reconsideration of Ameritech filed October 7, 1996, pp. 3-6.

[30] AirTouch Comments, pp. 20-22; Sprint Comments, pp. 2-3; and PUCO Comments, pp. 2-3.

local competition. Since Ameritech's request is contrary to both the statute and public policy, it should be denied.

VI. Paging Providers Should be Deemed to be Providing Telephone Exchange Service

13. In its petitions for reconsideration and/or clarification filed with respect to both the First Report and the Second Report, AirTouch Paging, Cal Auto-fone and Radio Electronic Products Corp. and PageNet requested that the Commission expressly find that paging carriers provide telephone exchange service.[31/] These carriers conclusively demonstrated that such a finding would be consistent with the language of the Act and FCC and court precedent. In its comments, PCIA supports the AirTouch and PageNet requests while USTA opposes this request.[32/]

14. USTA's opposition to a finding that paging is a telephone exchange service must be rejected. USTA has not shown where Congress in amending the Communications Act of 1934 meant to eliminate over 20 years of Commission precedent that paging services are telephone exchange services. In addition, USTA has not demonstrated any public policy objectives that would be met by such an unduly restrictive reading of the definition of telephone exchange services. AirTouch respectfully submits that, based upon the demonstrations by AirTouch and PageNet that paging fits within the statutory definition of telephone exchange service, and past Commission and court findings that paging is telephone exchange service, there exists ample evidence upon which to base a finding that paging is telephone exchange service.

[31/] Petition for Partial Reconsideration and/or Clarification of AirTouch Paging (a wholly owned subsidiary of AirTouch), Cal Auto-fone and Radio Electronic Products Corp. filed September 30, 1996; Petition for Partial Reconsideration and/or Clarification of AirTouch Paging and PowerPage, Inc. filed October 7, 1996; Petition for Limited Reconsideration of Paging Network, Inc. filed September 30, 1996; Petition for Limited Reconsideration of Paging Network, Inc. filed October 7, 1996.

[32/] USTA Comments, pp. 11-12. USTA also opposed this request in its comments on the petitions for reconsideration filed with respect to the First Report, and therefore did not reiterate its arguments here.

Conclusion

WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission reconsider its Second Report consistent with AirTouch's Petition for Partial Reconsideration and/or Clarification and the comments and replies relating to petitions filed by other parties in this proceeding.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

Mark A. Stachiw
Vice President, Senior
Counsel and Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Dallas, TX 75251
(972) 860-3200

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N Street, N.W., Ste. 800
Washington, D.C. 20036
(202) 293-3800

Pamela Riley
AirTouch Communications, Inc.
One California Street
San Francisco, CA 94111
(415) 658-2000

December 5, 1996

CERTIFICATE OF SERVICE

I, Christine M. Crowe, hereby certify that a copy of the foregoing Reply of AirTouch Communications, Inc. to Comments and Oppositions was served via first class mail on this 5th day of December, 1996 to the following persons:

John M. Goodman
Lawrence W. Katz
1320 North Court House Road
Arlington, VA 22201

Daniel L. Brenner
Neal M. Goldberg
David Nicoll
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036

Paul H. Kuzia
Arch Communications Group, Inc.
1800 West Park Drive
Suite 350
Westborough, MA 01581

Charles C. Hunter
Catherine M. Hannan
Hunter & Mow, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Mark C. Rosenblum
Roy E. Hoffinger
Clifford K. Williams
James H. Bolin, Jr.
295 North Maple Avenue
Room 3245I1
Basking Ridge, NJ 07920

Werner K. Hartenberger
Laura H. Phillips
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue
Suite 800
Washington, D.C. 20036

Robert B. McKenna
Kathryn M. Krause
Jeffrey S. Bork
1020 19th Street, N.W.
Washington, D.C. 20036

Marlin D. Ard
John W. Bogy
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105

Leon Kestenbaum
Jay C. Keithley
Norina T. Moy
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

Steven T. Nourse
Public Utilities Section
180 East Broad Street
Columbus, OH 43266

John L. Bartlett
Angela N. Watkins
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Jan David Jubon, P.E.
Jubon Engineering, P.C.
3816 Winters Hill Drive
Atlanta, GA 30360-1331

Donna M. Roberts
Lisa B. Smith
Donald J. Elardo
MCI Telecomms. Corp.
1801 Penn. Ave., N.W.
Washington, D.C. 20006

Andrew D. Lipman
Russell M. Blau
Swidler, Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Howard J. Symons
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Penn. Ave., N.W.
Suite 900
Washington, D.C. 20004

Maureen O. Helmer
General Counsel
State of New York
Department of Public
Service
Three Empire State Plaza
Albany, NY 12223-1350

Mark J. Tauber
Kecia Boney
Mark J. O'Connor
Piper & Marbury L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Shirley A. Woo
Pacific Gas and Electric
Co.
P.O. Box 7442
San Francisco, CA 94120

Judith St. Ledger-Roty
Reed, Smith, Shaw & McClay
1301 K Street, N.W.
Suite 1100 East Tower
Washington, D.C. 20005

Lee A. Rau
Reed, Smith, Shaw & McClay
8251 Greensboro Drive
Suite 1100
McLean, Virginia 22102

Maureen A. Scott
Commonwealth of
Pennsylvania
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

James D. Ellis
Robert M. Lynch
David F. Brown
175 E. Houston
Room 1254
San Antonio, TX 78205

Durward D. Dupre
Mary W. Marks
J. Paul Walters, Jr.
One Bell Center
Room 3520
St. Louis, MI 63101

Teresa Marrero
Senior Regulatory Counsel
Teleport Communications
Group Inc.
Two Teleport Drive
Staten Island, NY 10311

Henry D. Levine
Levin, Blaszak, Block &
Boothby
1300 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20036

Antoinette Cook Bush
Mark C. Del Bianco
Jeffry A. Brueggeman
Skadden, Arps, Slate,
Meagher & Flom
1440 New York Ave., N.W.
Washington, D.C. 20005

William J. Balcerski
Campbell L. Ayling
NYNEX Telephone Companies
1111 Westchester Avenue

White Plains, NY 10604

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend
U.S. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

M. Robert Sutherland
Theodore R. Kingsley
BellSouth Corporation
BellSouth
Telecommunications, Inc.
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, GA 30309-3610

Margot Smiley Humphrey
National Rural Telecom
Assoc.
Koteen & Naftalin, LLP
1150 Connecticut Ave., N.W.
Suite 1000
Washington, D.C. 20036

Russell D. Lukas
Lukas, McGowan, Nace &
Gutierrez, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Robert L. Hoggarth
Robert R. Cohen
PCIA
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Christine Crowe
Christine M. Crowe